

REMARKS

Claims 60-80 are pending and are subject to a Unity of Invention restriction under 35 U.S.C. §§ 121 and 372 for reciting inventions or groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1. (*See*, Office Communication of June 22, 2007, at page 2, hereinafter "Office Communication").

The Examiner has required election in the present application between:

Group I, claims 60-68, 70, 73 and 78-79, drawn to a *Helicobacter pylori* binding substance.

Group II, claims 69 and 74-77, drawn to use of the substance.

Group III, claims 71-72, drawn to a method of treating a condition due to the presence of *Helicobacter pylori*.

Group IV, claim 80, drawn to a method for remodeling natural food material.

For the purpose of examination of the present application, Applicants elect, with traverse, Group III, Claims 71-72.

Applicants also elect Species NeuNAc α 3Gal β 4GlcNAc β 3Gal.

Once the elected species is found to be allowable, the Examiner is requested to expand the examination of the claims to the non-elected species.

Unity of Invention

Applicants traverse the Unity of Invention restriction at least on the grounds that a) the Examiner has not sufficiently set forth the reasoning behind the restriction, b) the Examiner's

restriction is improper because in fact, the claims should, at most, be subject to a species election, not a restriction, and c) it would not be an undue burden to examine the claims as presented.

First, Applicants point out that the Examiner provides only very limited reasoning for the extreme restriction of the claims into 4 groups. Applicants argue that the common technical feature in all groups is the binding of *H. pylori* to the substances as defined in claim 60 or 68 and throughout the specification. In other words, the inventive step of all claims is based on this new binding phenomenon not disclosed in the prior art. Thus, the Examiner is able to search all of the claims in one search considering whether said substances are used in the prior art in relation with *H.pylori*. Therefore, it would not be an undue burden for the Examiner to continue the proceedings with all of the claims or at least with 68, 69 and 71-77 directed to pharmaceutical or nutritional compositions and their various uses.

The disclosure of Mollicone *et al.* may teach related subject matter of product claim 60, but the document does not disclose any pharmaceutical or nutritional composition comprising any of the substances of claim 60. Therefore, the subject matter of claim 68 is new over the teaching of Mollicone *et al.*

Therefore, for at least these reasons, Applicants assert that the Examiner has entirely failed to establish the need for a restriction because there is no evidence or reasoning provided for the assertion that there is no common special technical feature and/or no common general inventive concept.

For at least the preceding reasons, Applicants respectfully request that the unity of invention restriction be reconsidered and withdrawn.

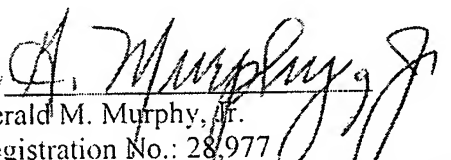
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eggerton Campbell, Registration No. 51,307 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

- ☒ Attached is a Petition for Extension of Time.
- ☒ Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: January 14, 2009

Respectfully submitted,

By 

Gerald M. Murphy, Jr.

Registration No.: 28,977

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant